

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

G. MEMO VERA,

Petitioner,

v.

MELINDA REED,

Respondent.

No. 1:23-cv-01057-JLT-SKO (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
(Doc. 5)

ORDER DISMISSING PETITION FOR WRIT  
OF HABEAS CORPUS, DIRECTING CLERK  
OF COURT TO PROVIDE BLANK CIVIL  
RIGHTS FORMS, AND DIRECTING CLERK  
OF COURT TO ENTER JUDGMENT AND  
CLOSE CASE

ORDER DECLINING TO ISSUE  
CERTIFICATE OF APPEALABILITY

G. Memo Vera is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The assigned magistrate judge conducted a preliminary review of the case pursuant to Rule 4 of the Rules Governing § 2254 Cases. (Doc. 5.) The magistrate judge found Petitioner fails to state a cognizable habeas claim, because he challenges conditions of his confinement with the seizure of his legal property. (*Id.* at 2.) To the extent Petitioner seeks to challenge his conviction, the magistrate judge found the Petition is successive. (*Id.* at 2-3.) Therefore, the magistrate judge recommended that the petition be dismissed, without prejudice to Petitioner bringing his claims concerning property as a separate civil rights action. (*Id.* at 3.)

1 Petitioner filed objections to the Findings and Recommendations. (Doc. 10.) However,  
2 Petitioner does not dispute that his petition addressed the seizure of property by correctional  
3 officers. (*See generally id.*; *see also* Doc. 1 at 5.) In addition, he does not dispute the magistrate  
4 judge's finding that he previously sought federal habeas relief with respect to his 1997 conviction  
5 in *Vera v. Ryan*, Case No. 1:04-cv-06349-OWW-TAG.

6 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court conducted a *de*  
7 *novo* review of the case. Having carefully reviewed the entire file, including Petitioner's  
8 objections, the Court concludes the Findings and Recommendations are supported by the record  
9 and proper analysis.

10 In addition, the Court declines to issue a certificate of appealability. A state prisoner  
11 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of  
12 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537  
13 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a certificate of  
14 appealability is 28 U.S.C. § 2253, which provides as follows:

15 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
16 district judge, the final order shall be subject to review, on appeal, by the court of  
appeals for the circuit in which the proceeding is held.

17 (b) There shall be no right of appeal from a final order in a proceeding to test  
18 the validity of a warrant to remove to another district or place for commitment or  
19 trial a person charged with a criminal offense against the United States, or to test  
the validity of such person's detention pending removal proceedings.

20 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an  
appeal may not be taken to the court of appeals from—

21 (A) the final order in a habeas corpus proceeding in which the  
22 detention complained of arises out of process issued by a State  
court; or

23 (B) the final order in a proceeding under section 2255.

24 (2) A certificate of appealability may issue under paragraph (1) only if the  
25 applicant has made a substantial showing of the denial of a constitutional  
right.

26 (3) The certificate of appealability under paragraph (1) shall indicate which  
27 specific issue or issues satisfy the showing required by paragraph (2).

28 If a court denies a petitioner's petition, the court may only issue a certificate of

1 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.  
2 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that  
3 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have  
4 been resolved in a different manner or that the issues presented were ‘adequate to deserve  
5 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting  
6 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

7 In the present case, the Court finds Petitioner has not made the required substantial  
8 showing of the denial of a constitutional right to justify the issuance of a certificate of  
9 appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not  
10 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to  
11 proceed further. Thus, the Court declines to issue a certificate of appealability. Accordingly, the  
12 Court **ORDERS**:

- 13 1. The Findings and Recommendations issued on July 21, 2023 (Doc. 5) are  
14 **ADOPTED** in full.
- 15 2. The petition for writ of habeas corpus is **DISMISSED** without prejudice to  
16 Plaintiff filing a civil rights action.
- 17 3. The Clerk of Court is directed to provide Petitioner with blank forms for filing a  
18 civil rights action.
- 19 4. The Clerk of Court is directed to enter judgment and close the case.
- 20 5. The Court declines to issue a certificate of appealability.

21 This order terminates the action in its entirety.

22  
23 IT IS SO ORDERED.

24 Dated: **October 16, 2023**

  
UNITED STATES DISTRICT JUDGE